IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23-2-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.1172 of 2001

M.Natarajan ... Appellant

Vs.

1. The Managing Director,
Chennai Metropolitan water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chindadripet,
Chennai - 600 002.

2. Chennai Metropolitan Water Supply
and Sewerage Board,
rep.by its Vigilance Officer-cum-
General Manager,
No.1, Pumping Station Road,
Chindadripet,
Chennai - 2. ... Respondents

This Writ Appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.6717 of 2000 dated 18.12.2000. Filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus or any other writ or order or direction in the nature of Writ to call for all the records relating to the compulsory retirement order passed in Proc.No.CMWSSB/P & A/VC3/30065/99 dated 26.10.1999 issued by the Managing Director, Chennai Metropolitan Watter Supply and Sewerage Board, No.1, pumping Station Road, Chintaripet, Chennai 600 002, the first respondent herein and on appeal confirmed in proceedings No. CMWSSB/P & A/VC2/ 1770/2000 dated 16.3.2000 issued by the Vigilance office Cum General Manager, Chennai Metropolitan water Supply and sewerage Board, No.1, Pumbing Station Road, Chindathripet, Chennai 2, the second respondent herein and quash the same as arbitrary, Ultravirus, unreasonable, illegal, against the rules and regulations of the respondent board, and principles of natural justice and thereby directing the respondents to reinstate the petitioner in to service as Depot Manager, with continuity or service and backwages will all consequential and other monetary benefits.

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For Appellant : Mr.M.Radhakrishnan,
for Mr.S.N.Ravichandran

For Respondents : Mr.B.Shanthakumar

J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order of the learned Single Judge made in W.P.No.6717 of 2000 dated 18.12.2000 dismissing the writ petition filed by the appellant herein.

2. The brief facts necessary for disposal of this writ appeal are as follows.

(a) Appellant joined in the service of the Chennai Metropolitan Water Supply and Sewerage Board as Demand Server on 6.11.1982 and he was promoted to the post of Revenue Collector on 6.1.1984. The appellant was further promoted to the post of Depot Manager during the year 1998 and he was serving with unblemished record of service.

(b) In the year 1995, the appellant's health condition was seriously affected and he applied for medical leave on 6.11.1995 as he was taking treatment. After expiry of the leave, he joined at Annanagar area and thereafter he was transferred to Area-VIII and he was working as Depot Manager in Depot No.129from 30.12.1998.

(c) A charge memo was issued to the appellant on 25.5.1997 for which the appellant submitted his explanation on 29.7.1997 to the Area Engineer-V. The charges levelled against the appellant were that the appellant absented from duty for the period from 6.11.1995 to 17.6.1996. The explanation submitted was that due to his illness and due to the health condition of appellant's wife, he applied for medical leave for the said period.

(d) Not satisfied with the said explanation, on 13.1.1999 departmental enquiry was conducted by the Junior Engineer of Area-V, wherein the charges levelled against the petitioner were held proved, pursuant to which the first respondent passed an order of compulsory retirement on 26.10.1999 stating that the appellant unauthorisedly absented from duty with effect from 6.11.1995 to 9.11.1997.

(e) The said order of compulsory retirement was challenged before the second respondent by filing an appeal and the same was confirmed by the second respondent by order dated 16.3.2000. The said order dated 26.10.1999 placing the petitioner under compulsory retirement and the order in appeal dated 16.3.2000, confirming the original order were challenged in the writ petition.

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(f) The main ground raised in the writ petition was that as the appellant applied for medical leave then and there, he was referred to medical board and the appellant was found fit for reporting to duty and on several occasions the respondent board did not permit the appellant to report for duty and ultimately subject to regularisation of leave the appellant was permitted to rejoin duty and in fact the leave was also regularised. The leave having been regularised, there is no ground to issue the charge memo alleging that the appellant has unauthorisedly absented from duty.

(g) The second ground raised as additional grounds in the writ appeal that the first respondent, who is the Managing Director, while considering the appeal of the appellant, was a Board member and therefore the order of the appellate authority is vitiated on the ground of bias and in violation of principles of natural justice. The appellant also raised various other contentions stating that the enquiry report was not furnished and the appellant was not given opportunity to submit his remarks and no personal hearing was given before passing the order of compulsory retirement, by the first respondent.

3. The first respondent filed counter affidavit wherein it is stated that the disciplinary proceedings were initiated in accordance with the CMWSS Board Service Regulations and an enquiry was conducted by giving full opportunity to the appellant and the Enquiry Officer submitted his report on 23.1.1999 and the appellant has taken inconsistent stand with regard to his illness during the enquiry. The only plea made by the appellant during the enquiry was that the period of absence from 6.11.1995 to 9.11.1997 may be treated as leave on loss of pay. It is further stated in the counter affidavit that the enquiry Officer's report was communicated to the appellant on 11.6.1999, but however, the appellant failed to submit any remarks and therefore the matter was placed before the Employment Committee, which is the competent authority and the first respondent passed final orders in proceedings dated 26.10.1999 signed on 2.11.1999. The appellant filed an appeal before the Board/2nd respondent on 8.1.2000 with delay. The Board considered the appeal in detail and decided to reject the appeal and the punishment imposed is very lenient.

4. The learned single Judge on consideration of the contentions raised, dismissed the writ petition and held that the appellant has not made out any ground to interfere in the impugned order in the writ petition. As against which, thie writ appeal is preferred.

5. The learned counsel for the appellant at the time of argument pointed out the following communications made by the appellant and respondents, which are countersigned by the respondents.

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1) Leave letter on medical grounds dated 12.11.1995 seeking medical leave from 6.11.1995 to 20.12.1995.
2) Joining letter dated 21.12.1995 with fitness certificate.
3) Leave letter dated 17.4.1996 submitted by the appellant for the period from 22.12.1995 to 9.4.1996
4) Joining letter dated 10.4.1996 with fitness certificate.
5) Leave letter dated 18.6.1996 with medical certificate for the period from 22.12.1995 to 17.6.1996
6) Joining letter dated 18.6.1996 with fitness certificate.
7) Communication dated 26.6.1996 of the Area Engineer-V, MMWSS Board, Chennai-40, to the Dean, Government General Hospital, Madras-3 for medical examination of the appellant.
8) Communication dated 10.7.1996 of the Regional Medical Board, Government General Hospital, Madras-3, addressed to the Area Engineer-V, Chennai-40, stating that the appellant should be examined by the Government Kilpauk Medical College Hospital, Chennai-10, near to the appellant's residence.
9) Communication of the Area Engineer-V, Chennai-40 dated 24.7.1996 addressed to the Dean Government Kilpauk Medical College Hospital, Kilpauk, Madras-10.
10) Representation of the appellant dated 18.10.1996.
11) Representation of the appellant dated 7.1.1997 addressed to the Principal, Government Kilpauk Medical College Hospital, Chennai-10 seeking medical fitness certificate.
12) Representation of the appellant dated 25.3.1997 seeking sanction of leave on loss of pay from 18.10.1996 to 24.3.1997 and permission to join duty from 25.3.1997.
13) Representation dated 9.5.1997 seeking permission to rejoin duty along with fitness certificate, issued by the Government Kilpauk Medical College Hospital.
14) Representation dated Nil, seeking leave from 12.5.1997 to 27.7.1997.
15) Joining report dated 28.7.1997
16) Communication of the Area Engineer-V, Chennai-40 dated 26.11.1997 informing the appellant that the General Manager through his proceedings dated 29.10.1997 permitted the appellant to join duty at Area-V office on 10.11.1997 FN and also stating that regularisation of unauthorised absence from 12.5.1997 to 27.7.1997 and for subsequent period till joining duty, necessary action is being taken to regularise the same.

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The learned counsel also stated that thereafter the appellant joined in service and his leave period was also regularised and therefore the respondents have no jurisdiction to frame the charges for the alleged unauthorised absence and the charges framed are unsustainable and the consequential enquiry and the punishment imposed are to be held illegal and the appellant should be reinstated in service with all benefits. The learned counsel also attacked the orders on various other grounds as set out in the affidavit, grounds of writ appeal and additional grounds and also cited various judgments in support of his contentions.

6. The learned counsel for the respondents submitted that the appellant repeatedly applied for medical leave, but it was not sanctioned and hence there is no justification on the part of the appellant to absent himself without sanction of leave and therefore four charges were framed against the appellant, for which enquiry was conducted and final decision was taken to impose punishment of compulsory retirement instead of termination of appellant's service. According to the learned counsel, the said decision was a lenient one and the appellant having filed the appeal belatedly the second respondent rejected the same on the ground of laches and there is no illegality in the order and the learned single Judge rightly dismissed the writ petition and the same need not be interfered with in this writ appeal.

7. We have considered the rival submissions of the learned counsel for the appellant as well as respondents.

8. The charges levelled against the appellant are as follows,

> "CHARGE 1: that Thiru M.Natarajan, R.C., has absented himself from duty from 06.11.95 to till date without permission and submitted leave letter belatedly only upto 05.05.97. This shows his willful insubordination and habitual negligence or neglect of work which amounts to misconduct under Regulation 6(1) and 6(3) of CMWSS Board Employees (Discipline and Appeal) Regulations, 1978.
>
> CHARGE 2: that Thiru M.Natarajan, R.C., is still unauthorisedly absented from duty without leave letter or without sufficient cause which amounts to misconduct under Rugulation 6(2) of CMWSS Board Employees (Discipline and Appeal) Regulations, 1978.
>
> CHARGE 3: that Thiru M.Natarajan,R.C., has

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absented himself from 06.11.95 and produced medical certificate belatedly stating that he has undergone treatment. Based on the above medical certificate the Regional Medical Board has issued the fitness certificate on 17.10.96 and on 05.05.97. Accordingly the incumbent has to attend the Office regularly from 18.10.96 and from 06.05.97, he has not turned up Office till date are tantamount to his habitual negligence or neglect of work is misconduct under Regulation 6(4) of CMWSS Board Employees (Discipline and Appeal) Regulations, 1978.

CHARGE 4: that Thiru M.Natarajan,R.C., has absented himself for a continuous period from 06.11.95 to till date (more than 1-1/2 years). In accordance with leave Regulation 10 extra-ordinary leave (amendments) of CMWSS Board when employee does not resume duty after remaining on leave or absence for a continuous period of either six months or one year as the case may be, he may be removed from service."

A perusal of the above charges show that the crux of the allegation is that the appellant absented himself unauthorisedly from 6.11.1995 to 9.11.1997. Even according to the Enquiry Officer's report dated 23.1.1999, the appellant had requested to treat his period of absence from 6.11.1995 to 9.11.1997 as leave on loss of pay. From the materials placed by the learned counsel for the appellant, particularly the communication of the Area Manager-V, dated 26.11.1997, it is seen that the first respondent, by order dated 29.10.1997, permitted the appellant to join duty at Area-V office on 10.11.1997 forenoon. The communication further states that on the request of the appellant for regularisation of his unauthorised absence from 12.5.1997 to 27.7.1997 and the subsequent period till joining duty, necessary action is being taken to regularise the same. We are informed by the learned counsel for the appellant that the said leave was also regularised. This statement of the learned counsel for the appellant is not disputed by the learned cousnel for the respondents.

9. In the light of the above undisputed factual position, it is to be seen whether the charges framed against the appellant for his unauthorised absence for the above said periods is sustainable and the proceedings initiated pursuant to the said charges are valid or not.

10. One of us (P.Sathasivam, J.) considered a similar issue with regard to imposing of punishment on the ground of unauthorised absence after the leave is regulated, in the decision reported in

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2000 WLR 848 (K.Orlanto v. Managing Director, Tamilnadu Rubber Corporation Ltd. & Anr.,), wherein it is held that the charge itself is not maintainable after the leave is regularised. The said judgment was rendered following the decision of Andhra Pradesh High Court decision reported in AIR 1996 AP 75 (G.Papaiah v. Assistant Director, Medical Services). In the said decision, paragraph 16 reads thus,

> "16. ..... In that case, charge No.2 relates to absence of the petitioner therein from duty for the period commencing from 16.5.1973 and ending with 25.5.1973. the Major, Officer Commanding in his order dated 18.6.1973, granted ten days EOL from 16.5.1973 to 25.5.1973 (both days inclusive) to the petitioner to regularise his intentional absence for the period. An argument was made on behalf of the employer that notwithstanding the grant of extraordinary leave to the petitioner therein, he can be proceeded against for his absence from duty for that period. Rejecting the said contention learned single Judge has concluded as follows:
>
> I am unable to agree with the learned counsel for the respondent that notwithstanding the grant of the extraordinary leave to the petitioner, he can be proceeded against for his absence from duty for that period. Whether it is an extraordinary leave, ordinary leave, leave on pay, leave on half pay, medical leave, or casual leave, nonetheless it is a leave. The kind of nature of leave is not material but the substance of the matter is that the petitioner was granted leave. When once leave is granted to a public servant, in respect of a particular period, it must be considered that he is permitted to absent himself from duty for that period. In such a case, it is not permissible or open to the employer or any other authority to proceed against the public servant for absenting from duty for the same period and punish him. The employer, either private or public cannot blow hot and cold. The authorities should have refused to grant leave of any kind to the petitioner and then proceeded to punish him after due and proper enquiry and after affording reasonable opportunity to him. When once leave has been granted, it cannot be said that the petitioner had absented himself from duty and thereby made

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himself liable to be punished. Hence, the second charge relating to the absense of the petitioner from duty from 16th May, 1973 to 25th May, 1973, both days inclusive, is not sustainable. I may add that the very order granting extraordinary leaves states that such leave has been granted to regularise the petitioner's intentional absence for the period. the very purpose of granting the leave being to regularise the petitioner's intentional absence, it is not open to the respondent to initiate any proceedings against the petitioner for his absence from duty for that period. Judged from any angle, the second charge must be quashed and it is not sustainable."

The order passed by this Court in 2000 WLR 848 (cited supra) was challenged in W.A.No.473 of 2000 and the same was dismissed by a Division Bench of this Court on 22.3.2000 stating the following reasons.

"... The counsel for the appellant contended that the respondent was unauthorisedly absent for a long period and therefore the disciplinary authority was justified in dismissing the appellant from service. But it is relevant to note that the respondent herein had submitted application for leave and this application for leave was granted and it was specifically stated that the previous absence was regularised. The counsel for the appellant contended that the regularisation was given only for the purpose of straightening the service records of the respondent and the appellants never treated the absence as authorised. We find no force in the said contention as the leave was applied by the respondent was granted by the appellants-Corporation and the absence was regularised by the concerned authority. The learned single Judge has extracted the order passed by the authority in the impugned judgment. In view of the said circumstances, we do not find any force in the contention now advanced by the appellant. Writ appeal is dismissed."

The above judgment was followed by one of us (N.PAUL VASANTHAKUMAR, J.) in the decision reported in (2006) 2 MLJ 686 (Dr.G.Rajendran v. Secretary to Government, Health and Family Welfare Department), wherein it was found that after the leave period was regularised, the issuance of charge memo, conduct of disciplinary proceeding,

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imposition of punishment for the unauthorised absence are all unsustainable and the writ petition was allowed.

11. In view of the above cited decisions, we are of the view that the respondents having regularised the period of absence from 12.5.1997 to 27.7.1997 and the subseqnent period till joining duty by the appellant, the charge framed against the appellant are not maintainable. Therefore, the consequential enquiry and the subsequent imposition of punishment of compulsory retirement are also unsustainable. The learned single Judge has not adverted to this aspect of the matter in the impugned order dated 18.12.2000.

12. In view of our above referred finding the order of the learned single Judge is set aside and the writ appeal is allowed. Respondents are directed to reinstate the appellant in service as Depot Manager with continuity of service, backwages and all consequential monetary benefits, with within a period of eight weeks from the date of receipt of copy of this order. No costs.

vr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Managing Director,
Chennai Metropolitan water Supply and Sewerage Board,
No.1, Pumping Station Road,Chindadripet,Chennai-600002.

2. The Vigilance Officer-cum-General Manager,
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Station Road, Chindadripet, Chennai - 2.

+ 1 cc to Mr. B. Shanthakumar, Advocate, SR No.11312

+ 1 cc to Mr. S.N. Ravichandran, Advocate, SR No.10911

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